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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,577	12/22/2003	Matt Sveum	92/P03-014A	7985

34431 7590 12/24/2009  
HANLEY, FLIGHT & ZIMMERMAN, LLC  
150 S. WACKER DRIVE  
SUITE 2100  
CHICAGO, IL 60606

EXAMINER
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RUDAWITZ, JOSHUA I

ART UNIT	PAPER NUMBER
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3652

NOTIFICATION DATE	DELIVERY MODE
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12/24/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mhanley@hfzlaw.com  
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<b>Office Action Summary</b>	<b>Application No.</b> 10/743,577	<b>Applicant(s)</b> SVEUM ET AL.	
	<b>Examiner</b> JOSHUA I. RUDAWITZ	<b>Art Unit</b> 3652	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 27-34,36,37 and 46-65 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 27-34,36,37 and 46-65 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>09042009</u> .  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 27, 32-34, 36-37, 46, 48-50, 55-59 and 64-65 are rejected under 35 U.S.C. 102(b) as being anticipated by Kish (US 6,488,464).

Kish discloses a method of operating a vehicle brace engagable adjacent a vehicle's rear edge as material handling equipment traverses the rear edge while accessing the vehicle, the method comprising: continuously exerting an upward biasing force on the vehicle brace by way of a first actuation system 70 to bias the vehicle brace 60 to a raised, inoperative position (fig. 3), the first actuation system increasing the upward biasing force directly upon the brace in response to downward movement of the brace; and selectively causing, by a second actuation system 28'/102, the vehicle brace to apply a reactive upward force separate from the upward biasing force and adjacent the vehicle's rear edge, wherein the reactive upward force minimizes downward movement of the vehicle's rear edge that would otherwise result from the applied weight of the material handling equipment; increasing the reactive upward force in response to an increase in a rate of descent of the vehicle's rear edge (6:49 et seq.); wherein increasing the reactive upward force is carried out by forcing fluid through a flow

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restriction, as the piston includes fluid, movement of the piston head would act as a flow restriction upon movement; wherein causing the vehicle brace to exert a reactive upward force is carried out by applying frictional drag; sensing when the vehicle is about to be loaded or unloaded, via control system, shown in figure 6; raising a vehicle restraining member 14 to limit horizontal movement of the vehicle; permitting the vehicle brace to be lowered to a preparatory position upon interaction with the vehicle, prior to selectively causing the vehicle brace to apply the second reactive upward force; the first actuation system comprises a spring 70 and the second actuation system comprises an actuator; positioning nonmovably one end of each of the first and second actuation systems.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 28-31, 51-54 and 60-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over KISH.

Kish discloses further comprising allowing the brace to yield for a reactive upward force that exceeds the predetermined upper limit; the reactive upward force is created by preventing movement of the brace until the reactive upward force reaches the predetermined upper limit; the reactive upward force minimizes downward movement of the vehicle's rear edge by being substantially equal to a

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downward force resulting from the weight of the material handling equipment until the reactive upward force reaches the predetermined upper limit.

Kish fails to disclose limiting the reactive upward force to a predetermined upper limit that is below a value at which the reactive upward force would cause damage to the structure of the vehicle, however it would have been obvious to one having ordinary skill in the art to set the thresholds such that damage to the vehicle is prevented since it is clear that a primary purpose of the KISH apparatus is to operate without damaging the vehicle.

### ***Response to Arguments***

5. Applicant's arguments with respect to claims 27-34, 36, 37, 46, 48-65 have been considered but are moot in view of the new ground(s) of rejection. The examiner notes that while the same reference has been applied it is applied differently in the above rejection than previously. Most notably the brace is being referred to as element 60 and the first actuator is element 70 (Kish).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSHUA I. RUDAWITZ whose telephone number is (571)272-7856. The examiner can normally be reached on Monday - Friday, 7:30 A.M. - 5:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on 571-272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. I. R./  
Examiner, Art Unit 3652

/Saúl J. Rodríguez/  
Supervisory Patent Examiner, Art  
Unit 3652